

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Appeal 2009-001218

In Re Application Of:)	Confirmation No. 8653
)	
George Michael MOCKRY et al.)	Group Art Unit: 3711
)	
)	Examiner: M. Chambers
Serial No.: 09/878,860)	
)	Customer No. 22907
)	
Filed: June 9, 2001)	Attorney Docket No.: 006385.00001

**For: METHOD OF RECORDING AND PLAYING BASEBALL GAME
SHOWING EACH BATTER'S LAST PITCH**

REQUEST FOR REHEARING

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REQUEST FOR REHEARING

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Appeal Brief - Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

In response to the recent DECISION ON APPEAL in the subject

application, Appellants submit this Request for Rehearing. Please charge any fee associated with this filing to our Deposit Account No. 19-0733. This paper is being submitted within two months of the date of decision (August 3, 2009) and thus is timely.

REAL PARTIES IN INTEREST

The real parties in interest in this application remain the inventors,

George Michael Mockry
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Dolores, Colorado 81323

Greg Mockry
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Massena, New York 13662

The application is not assigned.

RELATED APPEALS AND INTERFERENCES

There still are no related appeals or interferences. See also Appendix 3.

STATUS OF CLAIMS

Claims 1-22 were previously canceled. The patentability of claims 23-25,

27-30 and 32-40 were decided by the appeal.¹ In the DECISION ON APPEAL, the rejection of claim 24 was reversed; while the rejection of claims 23, 25, 27-30 and 32-40 was affirmed. Appellants now request rehearing (reconsideration) of the affirmance of the rejection of claims 30 and 32-34, claims dependent on claim 24 (the rejection of which was reversed by the decision). Appendix 1 presents a copy of the claims that were involved in this appeal.

SUMMARY OF REASONS FOR REHEARING

The point believed to have been misapprehended or overlooked by the Board is the dependency of claims 30 and 32-34 on claim 24, the claim for which the rejection was reversed.

SOLE GROUND OF REHEARING

Whether the rejection of claims 30 and 32-34 also should be reversed based on their dependency from claim 24, the claim on which the rejection had been reversed by the Decision.

¹ In the original brief (and as stated in the “Claims” section of the decision), the pending claims were identified as claims 23-40. Actually, claims 26 and 31 had been previously cancelled, such that the claims pending during the appeal were only claims 23-25, 27-30 and 32-40; all of the claims that were governed by the decision. Appellants apologize for the error in the original brief.

ARGUMENT

As noted in *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) “dependent claims are nonobvious if the independent claims from which they depend are nonobvious.” Claims 30 and 32-34 are dependent on claim 24. Claim 24 is the independent claim for which the Decision on Appeal REVERSED the final rejection of obviousness (35 USC § 103(a)). Based on the *In re Fritch* precedent, the claims dependent on independent claim 24 are also non-obvious and the final rejection of these claims based on obviousness also should be reversed.

CONCLUSION

For the reason given above, the affirmance of the rejection of claims 30, and 32-34 is reversible error. The Board of Patent Appeals and Interferences should rehear and reconsider the decision affirming the rejection of these claims and instead reverse the rejection of these claims.

Respectfully submitted,

/ Joseph M. Skerpon /

Date: August 21, 2009

By: _____
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APPENDIX 1. CLAIMS INVOLVED IN THE APPEAL

Claim 23. A method of replaying or rebroadcasting a baseball game for which a video recording of the baseball game was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video consisting essentially of (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) obtaining subscribers for viewing the edited recording and (c) playing or broadcasting the edited recording for viewing by the subscribers.

Claim 24. A method of providing a subscription for viewing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to reach base safely; with players failing to reach base safely

being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording by deleting substantially all game action other than (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (3) obtaining subscribers for viewing the edited recording and (4) playing or broadcasting the edited recording as a condensed recorded game for viewing by the subscribers.

Claim 25. The method of claim 23 wherein the edited recording for a nine-inning baseball game is about 15 minutes.

Claim 27. The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 28. The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 29. The method of claim 23 wherein the edited recording contains audio explaining any substitution of players.

Claim 30. The method of claim 24 wherein the edited recording for a nine-inning baseball game is about 15 minutes.

Claim 32. The method of claim 24 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 33. The method of claim 24 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 34. The method of claim 24 wherein the edited recording contains audio explaining any substitution of players.

Claim 35. A method of obtaining revenue by replaying or rebroadcasting a

condensed baseball game, for which a video recording of the baseball game was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video consisting essentially of (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) offering the edited recording to potential subscribers for viewing and (c) playing or broadcasting the edited recording for viewing by the subscribers for monetary consideration.

Claim 36. The method of claim 35 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 37. The method of claim 35 wherein the edited recording contains audio explaining any substitution of players.

Claim 38. A method of obtaining revenue from editing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to reach base safely; with players failing to reach base safely being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording which consists essentially of (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (3) offering the edited recording to potential subscribers for viewing and (4) playing or broadcasting the edited recording for viewing by the subscribers for monetary consideration.

Claim 39. The method of claim 38 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 40. The method of claim 38 wherein the edited recording contains audio explaining any substitution of players.

APPENDIX 2. EVIDENCE RELIED UPON

NONE

APPENDIX 3. RELATED PROCEEDINGS

There are no related proceedings.